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Affholter et al. v. Franklin County Water Distric	09/11/2008 06:18 PM
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Dale - attorneys at EPA and US Department of Justice are asking about a Jack Silver lawsuit in your neck of the woods: *Affholter et al. v. Franklin County Water District et al.* 1:07-cv-388 (E.D. Cal. March 8, 2008). We're wondering if the RWQCB has had any involvement in addressing the violations addressed in this case.

Apparently the case includes both RCRA and Clean Water Act claims. Our attorneys are particularly interested in the CWA claims because of possibility the case could set precedent related to the Rapanos decision. The CWA claims include allegations that Franklin County Water District is discharging to a water of the United States without an NPDES permit (Rapanos type issues involved).

Is the Regional Board pursuing enforcement against Franklin Co. WD for these discharges?
Has the RWQCB taken a position on whether FCWD needs to obtain an NPDES permit?

One of our attorneys called counsel for Franklin County (Joe Salazar) to discuss, and learned the following about the case:

Franklin County has a POTW that discharges to holding ponds. The holding ponds do not have any outfalls to waters of the United States (at least not by design). According to Mr. Salazar, the effluent either percolates into the ground or evaporates. Occasionally, however, there are overflows. These ponds are bounded by the El Capitan Canal (maintained by the Merced Irrigation District) and Black Rascal Creek, which flows into Bear Creek just west of Merced, California. Mr. Salazar acknowledged that the water district does not have an NPDES permit. He also stated that his client had received an NOV (not sure how long ago) and noted that a person named Dale Harvey is among the contacts with the regional water board that he has worked with.

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